

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
07-20062-CR-MORENO/SIMONTON**

Case No. \_\_\_\_\_  
18 U.S.C. § 371  
18 U.S.C. § 1347  
42 U.S.C. § 1320a-7b(b)(1)  
42 U.S.C. § 1320a-7b(b)(2)  
18 U.S.C. § 2

**UNITED STATES OF AMERICA**

**vs.**

**MARCOS MARTINEZ,  
ELSA DOMINGUEZ,  
and  
JULIAN TORRES,**

**Defendants.**

**INDICTMENT**

The Grand Jury charges that:

**General Allegations**

At all times relevant to this Indictment,

1. The Medicare Program ("Medicare") was a federal health care program providing benefits to persons who were over the age of 65 or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b). Individuals who received benefits under Medicare were referred to as Medicare "beneficiaries."

2. Part B of Medicare covered most outpatient services, including durable medical equipment (“DME”), that is, equipment which may be used in the home on a repeated basis for a medical purpose. Examples of DME would include wound care supplies, wheelchairs, and oxygen concentrators.

3. DME suppliers who met certain criteria could obtain a Medicare supplier number, which permitted them to submit claims directly to Medicare seeking reimbursement for the cost of DME supplied to eligible Medicare beneficiaries. In order to receive payment from Medicare, the DME supplier was also required to submit, either in hard copy or electronically, a health insurance claim form to Medicare. A DME supplier could contract with a billing company to prepare and transmit claims to Medicare.

4. Medicare Part B was administered in Florida by Palmetto Government Benefits Administrators (“PGBA”), which, pursuant to contract with the United States Department of Health of Human Services, served as a contracted carrier to receive, adjudicate and pay Medicare Part B claims submitted to it by Medicare beneficiaries, physicians, or suppliers of health care items and services, including DME. Medicare Part B reimbursed DME suppliers directly for the cost of DME provided to eligible Medicare beneficiaries, provided that such equipment was ordered by a licensed physician who certified that the equipment was medically necessary for the beneficiary. Such physician certifications could be in the form of a prescription or a certificate of medical necessity (“CMN”). Medicare regulations required suppliers to maintain these prescriptions or CMNs on file at their DME companies.

5. Defendant **ELSA DOMINGUEZ** owned and operated Carib Med. Services, Inc. (“Carib”), a Florida corporation located in Miami, Florida. Carib was engaged in business to provide DME items and services to Medicare beneficiaries, had a Medicare supplier number, and was eligible to receive reimbursement from Medicare for DME items and services that were supplied to beneficiaries.

6. Defendant **MARCOS MARTINEZ** was employed by Carib.

7. Defendant **JULIAN TORRES** was licensed in the State of Florida as a physician assistant, and later a physician, and he signed prescriptions and CMNs concerning Medicare beneficiaries who purportedly received DME from Carib.

**COUNT 1**  
**(Conspiracy to Defraud the United States and to Commit Federal Offenses:**  
**18 U.S.C. § 371)**

1. Paragraphs 1 through 7 of the General Allegations section of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. From in or around August 2003, and continuing through in or around June 2005, the exact dates being unknown to the Grand Jury, in Miami-Dade County, in the Southern District of Florida, and elsewhere, defendants,

**MARCOS MARTINEZ,**  
**ELSA DOMINGUEZ,**  
**and**  
**JULIAN TORRES,**

did willfully, that is, with the intent of furthering the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with persons known and unknown to the Grand Jury:

(A) to defraud the United States by impeding, impairing, obstructing and defeating, through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration of the Medicare Program;

(B) to commit an offense against the United States, that is, to violate Title 18, United States Code, Section 1347, by knowingly and willfully executing, and attempting to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services;

(C) to commit an offense against the United States, that is, to violate Title 42, United States Code, Section 1320a-7b(b)(1) by knowingly and willfully soliciting and receiving any remuneration, including any kickback and bribe, directly and indirectly, overtly and covertly, in cash and in kind in return for: referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part by Medicare; and for purchasing, leasing, ordering, and arranging for and recommending the purchasing, leasing, and ordering of any good, item, and service for which payment may be made in whole or in part by Medicare; and

(D) to commit an offense against the United States, that is, to violate Title 42, United States Code, Section 1320a-7b(b)(2) by knowingly and willfully offering and paying any remuneration, including any kickback and bribe, directly and indirectly, overtly and covertly, to a person to induce such person: to refer an individual to a person for the furnishing and arranging for

the furnishing of any item and service for which payment may be made in whole or in part by Medicare; and to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering any good, item, and service for which payment may be made in whole or in part by Medicare.

#### **Purpose of the Conspiracy**

3. It was a purpose of the conspiracy for **MARCOS MARTINEZ, ELSA DOMINGUEZ**, and **JULIAN TORRES** to unlawfully enrich themselves by: (a) submitting or causing the submission of false and fraudulent claims to Medicare for the cost of DME items and services; (b) paying kickbacks and bribes to obtain Medicare beneficiary referrals and Medicare-related business for Carib; and (c) receiving kickbacks and bribes in return for Medicare beneficiary referrals and Medicare-related business for Carib.

#### **Manner and Means of the Conspiracy**

The manner and means by which defendants and their co-conspirators sought to accomplish the purpose and objects of the conspiracy included, among others, the following:

4. **ELSA DOMINGUEZ** would incorporate and obtain a Medicare supplier number for Carib in order to submit Medicare claims to be reimbursed for the cost of medically unnecessary DME items and services that Carib supposedly had provided Medicare beneficiaries.

5. **JULIAN TORRES**, while working as a physician assistant in the medical office of L.L. and later as a physician in his own practice, and elsewhere, would prescribe medically unnecessary DME items and services for Medicare beneficiaries.

6. **MARCOS MARTINEZ** and **ELSA DOMINGUEZ** would pay kickbacks to **JULIAN TORRES** and other physicians or physician assistants to obtain prescriptions and CMNs that enabled Carib to submit false and fraudulent claims to Medicare for DME items and services.

7. **MARCOS MARTINEZ** and **ELSA DOMINGUEZ** would cause the submission of false and fraudulent claims to Medicare on behalf of Carib, seeking reimbursement for the cost of DME items and services prescribed by **JULIAN TORRES**.

8. **MARCOS MARTINEZ** and **ELSA DOMINGUEZ**, would cause Carib to submit approximately \$2,000,000 in false and fraudulent claims to Medicare and would receive approximately \$1,000,000 in Medicare payments.

9. **ELSA DOMINGUEZ** would pay at least \$19,950 in kickbacks for DME prescriptions and CMNs completed by **JULIAN TORRES**.

#### **Overt Acts**

In furtherance of the conspiracy, and to accomplish its purpose and objects, at least one of the conspirators committed, or caused to be committed, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the following overt acts, among others:

1. On or about August 25, 2003, **JULIAN TORRES** prescribed medically unnecessary surgical supplies for Medicare beneficiary M.M.

2. On or about October 1, 2003, **JULIAN TORRES** received a \$1,000 kickback in the form of a check made payable to "Cash," drawn on Carib's bank account and executed by **ELSA DOMINGUEZ**, in return for authorizing the provision of medically unnecessary DME items for Carib beneficiaries.

3. On or about October 8, 2003, **JULIAN TORRES** prescribed a medically unnecessary power pressure reducing air mattress for Medicare beneficiary R.M.

4. On or about November 5, 2003, **JULIAN TORRES** received a \$1,250 kickback in the form of a check made payable to "Cash," drawn on Carib's bank account and executed by **ELSA DOMINGUEZ**, in return for authorizing the provision of medically unnecessary DME items for Carib beneficiaries.

5. On or about November 12, 2003, **JULIAN TORRES** received a \$1,050 kickback in the form of a check made payable to "Cash," drawn on Carib's bank account and executed by **ELSA DOMINGUEZ**, in return for authorizing the provision of medically unnecessary DME items for Carib beneficiaries.

6. On or about December 2, 2003, **JULIAN TORRES** caused **MARCOS MARTINEZ** and **ELSA DOMINGUEZ**, through Carib, to submit a false and fraudulent claim to Medicare, seeking reimbursement of \$2,446.20 for medically unnecessary surgical supplies for Medicare beneficiary M.M.

7. On or about December 3, 2003, **MARCOS MARTINEZ** and **ELSA DOMINGUEZ** paid a \$4,500 kickback to **JULIAN TORRES** in the form of a check made payable to **TORRES'** wife and drawn on Carib's bank account, in return for authorizing the provision of medically unnecessary DME items for Carib beneficiaries.

8. On or about December 5, 2003, **JULIAN TORRES** caused **MARCOS MARTINEZ** and **ELSA DOMINGUEZ**, through Carib, to submit a false and fraudulent claim to Medicare, seeking reimbursement of \$800 for a medically unnecessary power pressure reducing air mattress for Medicare beneficiary R.M.

9. On or about January 12, 2004, **JULIAN TORRES** prescribed a medically unnecessary power pressure reducing air mattress for Medicare beneficiary J.P.

10. On or about February 14, 2004, **JULIAN TORRES** caused **MARCOS MARTINEZ** and **ELSA DOMINGUEZ**, through Carib, to submit a false and fraudulent claim to Medicare, seeking reimbursement of \$800 for a medically unnecessary power pressure reducing air mattress for Medicare beneficiary J.P.

11. On or about April 12, 2004, **JULIAN TORRES** prescribed a medically unnecessary oxygen concentrator for Medicare beneficiary G.S.

12. On or about July 22, 2004, **MARCOS MARTINEZ** and **ELSA DOMINGUEZ** paid a \$2,800 kickback to **JULIAN TORRES** in the form of a check made payable to **TORRES'** wife and drawn on Carib's bank account, in return for authorizing the provision of medically unnecessary DME items for Carib beneficiaries.

13. On or about August 3, 2004, **JULIAN TORRES** caused **MARCOS MARTINEZ** and **ELSA DOMINGUEZ**, through Carib, to submit a false and fraudulent claim to Medicare, seeking reimbursement of \$340 for a medically unnecessary oxygen concentrator for Medicare beneficiary G.S.

14. On or about October 29, 2004, **JULIAN TORRES** prescribed a medically unnecessary oxygen concentrator for Medicare beneficiary D.S.

15. On or about October 29, 2004, **MARCOS MARTINEZ** and **ELSA DOMINGUEZ** paid a \$2,000 kickback to **JULIAN TORRES** in the form of a check made payable to **TORRES'** wife and drawn on Carib's bank account, in return for authorizing the provision of medically unnecessary DME items for Carib beneficiaries.



16. On or about March 7, 2005, **JULIAN TORRES** caused **MARCOS MARTINEZ** and **ELSA DOMINGUEZ**, through Carib, to submit a false and fraudulent Medicare claim, seeking reimbursement of \$300 for a medically unnecessary oxygen concentrator for Medicare beneficiary D.S.

All in violation of Title 18, United States Code, Section 371.

**COUNTS 2-6**  
**(Health Care Fraud: 18 U.S.C. §§ 1347 and 2)**

1. Paragraphs 1 through 7 of the General Allegations section of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. From in or around August 2003, and continuing through in or around June 2005, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**MARCOS MARTINEZ,**  
**ELSA DOMINGUEZ,**  
**and**  
**JULIAN TORRES,**

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud Medicare, a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program, that is: the defendants caused the submission of claims to Medicare, through PGBA, that falsely and fraudulently sought reimbursement for medically unnecessary DME items and services and that falsely and fraudulently failed to disclose the payment of kickbacks and bribes.

### **Purpose of the Scheme and Artifice**

3. It was a purpose of the scheme and artifice for **MARCOS MARTINEZ, ELSA DOMINGUEZ**, and **JULIAN TORRES** to unlawfully enrich themselves by: (a) submitting or causing the submission of false and fraudulent claims to Medicare for the cost of DME items and services; (b) paying kickbacks and bribes to obtain Medicare beneficiary referrals and Medicare-related business for Carib; and (c) receiving kickbacks and bribes in return for Medicare beneficiary referrals and Medicare-related business for Carib.

### **The Scheme and Artifice**

4. The allegations in Paragraphs 4 through 9 of the Manner and Means section of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

### **Acts in Execution of the Scheme and Artifice**

5. On or about the dates specified as to each count below, in Miami Dade County, in the Southern District of Florida, and elsewhere, **MARCOS MARTINEZ, ELSA DOMINGUEZ**, and **JULIAN TORRES**, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud a health care benefit program affecting commerce, that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program:

Count	Beneficiary	Claim Date	Description of DME	Amount Paid by Medicare
2	M.M.	12/2/03	Surgical Supplies	\$1,632.24
3	R.M.	12/5/03	Power Pressure Reducing Air Mattress	\$556.06
4	J.P	2/14/04	Power Pressure Reducing Air Mattress	\$417.05
5	G.S.	8/3/04	Oxygen Concentrator	\$170.49
6	D.S.	3/7/05	Oxygen Concentrator	\$170.49

All in violation of Title 18, United States Code, Sections 1347 and 2.

**COUNTS 7-12**

**(Payment of Kickbacks: 42 U.S.C. § 1320a-7b(b)(2) and 18 U.S.C. § 2)**

1. Paragraphs 1 through 7 of the General Allegations section of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. On or about the dates enumerated below, in Miami-Dade County, in the Southern District of Florida, the defendants,

**MARCOS MARTINEZ  
and  
ELSA DOMINGUEZ,**

did knowingly and willfully offer and pay remuneration, specifically, kickbacks and bribes in the form of checks, directly and indirectly, overtly and covertly, to a person to induce such person: to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering of any good, item, and service for which payment may be made in whole or in part by Medicare:

<b>Count</b>	<b>Date of Check</b>	<b>Check Number</b>	<b>Payee; Endorsed By</b>	<b>Check Amount</b>
7	10/01/03	1210	Cash; <b>JULIAN TORRES</b>	\$1,000
8	11/05/03	1283	Cash; <b>JULIAN TORRES</b>	\$1,250
9	11/12/03	1290	Cash; <b>JULIAN TORRES</b>	\$1,050
10	12/03/03	1347	D.T.	\$4,500
11	7/22/04	1811	D.T.	\$2,800
12	10/29/04	2096	D.T.	\$2,000

All in violation of Title 42, United States Code, Section 1320a-7b(b)(2)(B), and Title 18, United States Code, Section 2.

**COUNTS 13-18**  
**(Receipt of Kickbacks: 42 U.S.C. § 1320a-7b(b)(1) and 18 U.S.C. § 2)**

1. Paragraphs 1 through 7 of the General Allegations section of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. On or about the dates enumerated below, in Miami-Dade County, in the Southern District of Florida, the defendant,

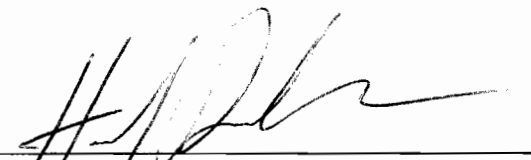
**JULIAN TORRES,**

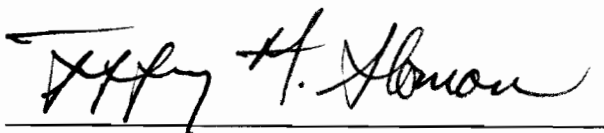
did knowingly and willfully solicit and receive remuneration, specifically, kickbacks and bribes in the form of checks, directly and indirectly, overtly and covertly, in return for purchasing, leasing, ordering, and arranging for and recommending the purchasing, leasing, and ordering of any good, item, and service for which payment may be made in whole or in part by Medicare:

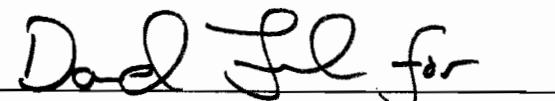
Count	Date of Check	Check Number	Payee; Endorsed By	Check Amount
13	10/01/03	1210	Cash; JULIAN TORRES	\$1,000
14	11/05/03	1283	Cash; JULIAN TORRES	\$1,250
15	11/12/03	1290	Cash; JULIAN TORRES	\$1,050
16	12/03/03	1347	D.T.	\$4,500
17	7/22/04	1811	D.T.	\$2,800
18	10/29/04	2096	D.T.	\$2,000

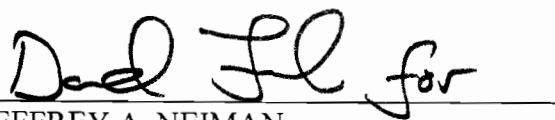
All in violation of Title 42, United States Code, Section 1320a-7b(b)(1)(B), and Title 18, United States Code, Section 2.

A TRUE BILL

  
FOREPERSON

  
R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

  
KIRK OGROSKY  
DEPUTY CHIEF  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

  
JEFFREY A. NEIMAN  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

**Defendant's Name:** Marcos Martinez

**Case No:** \_\_\_\_\_

Count #: 1

Conspiracy to Defraud and to Commit Federal Offenses

18 U.S.C. § 371

**\* Max. Penalty:** 5 years' imprisonment

Counts #: 2-6

Health Care Fraud

18 U.S.C. § 1347 and 2

**\*Max. Penalty:** 10 years' imprisonment per count

Counts #: 7-12

Payment of Health Care Kickbacks

42 U.S.C. § 1320 - 7b(b)(2) and 18 U.S.C. § 2

**\*Max. Penalty:** 5 years' imprisonment per count

Count #:

\_\_\_\_\_

\_\_\_\_\_

**\*Max. Penalty:** \_\_\_\_\_

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

**Defendant's Name:** Elsa Dominguez

**Case No:** \_\_\_\_\_

Count #: 1

Conspiracy to Defraud and to Commit Federal Offenses

18 U.S.C. § 371

**\* Max. Penalty:** 5 years' imprisonment

Counts #: 2-6

Health Care Fraud

18 U.S.C. § 1347 and 2

**\*Max. Penalty:** 10 years' imprisonment per count

Counts #: 7-12

Payment of Health Care Kickbacks

42 U.S.C. § 1320 - 7b(b)(2) and 18 U.S.C. § 2

**\*Max. Penalty:** 5 years' imprisonment per count

Count #:

**\*Max. Penalty:** \_\_\_\_\_

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

**Defendant's Name:** Julian Torres

**Case No:** \_\_\_\_\_

Count #: 1

Conspiracy to Defraud and to Commit Federal Offenses

18 U.S.C. § 371

**\* Max. Penalty:** 5 years' imprisonment

Counts #: 2-6

Health Care Fraud

18 U.S.C. § 1347 and 2

**\*Max. Penalty:** 10 years' imprisonment per count

Counts #: 13-18

Receipt of Health Care Kickbacks

42 U.S.C. § 1320(a) - 7b(b)(1) and 18 U.S.C. § 2

**\*Max. Penalty:** 5 years' imprisonment per count

Count #:

**\*Max. Penalty:** \_\_\_\_\_

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**